

VZCZCXRO1006
PP RUEHRN
DE RUEHUNV #0129/01 0851520
ZNR UUUUU ZZH
P 261520Z MAR 09
FM USMISSION UNVIE VIENNA
TO RUEHC/SECSTATE WASHDC PRIORITY 9217
RUCNDT/USMISSION USUN NEW YORK 1554
RUEHBS/AMEMBASSY BRUSSELS 0197
RUEHRN/USMISSION UN ROME 0055
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UNCLAS SECTION 01 OF 03 UNVIE VIENNA 000129

DEPT FOR IO/T, EB/IFT/ODF AND L/PIL
EMBASSIES FOR ECON/POL

SIPDIS

E.O. 12958: N/A

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SUBJECT: FRANCE SOFTENS VIEWS ON UNCITRAL REFORM, SEEKS GUIDELINES
FOR CHAIRPERSONS

REF: 08 UNVIE VIENNA 000036, 08 UNVIE VIENNA 000038

SUMMARY

1. (U) The French mission on March 3 hosted an informal meeting to discuss UNCITRAL's working methods and rules of procedure. Representatives of 20 countries, the European Commission, and the UNCITRAL Secretariat attended the meeting. Switzerland, Colombia, Russia, Belarus, Spain, and the U.S. contributed to the discussions. France's main objectives are to establish guidelines to assist chairpersons of UNCITRAL meetings, with regard to consensus decision making and the participation of non-governmental organizations (NGOs), and to increase the transparency of the UNCITRAL Secretariat. France has significantly softened its approach since 2007 (see reftels), and is merely seeking clarification of existing rules rather than the introduction of new ones. The U.S. counter-position, that the Commission has been a very productive technical and non-political UN body that should not be rendered less effective through introduction of over-constraining rules, continues to resonate with other Missions.

2. (U) The French mission opened the meeting by thanking the Secretariat for its work on clarifying working methods, adding that substantial progress had been made, but several outstanding points still needed to be resolved. The discussion then turned to France's four main topics: the definition of consensus, status of observers, the work of the Secretariat, and language use. Dominique Bellenger, the UNCITRAL expert from Paris, opened each segment of the discussion with an appeal for formalized rules, but the representative from the French mission would summarize his comments on each point by proposing more informal solutions, suggesting French flexibility and willingness to compromise. End summary.

Defining Consensus

3. (U) The French proposed formal rules defining consensus -- specifically when and how consensus can be broken. Their objective is to develop guidelines for the chairpersons of working groups, who are typically non-experts on UN procedures. France opposed paragraph 14(b) of the draft Secretariat paper (A/CN.9/676), which states that "formal objection by a delegation. . . is to be treated as an implicit request for formal voting." France's view is that if there is a formal objection, discussions should go on until consensus is reached and voting should be used only as a last resort. This view was supported by a majority in the meeting,

although few supported it when formal meetings were held last year. Belarus added a third option, that the formal objection be noted in the report, without blocking consensus, which is consistent with existing practice. That option appears favored in the Secretariat's latest Note on rules and procedures. All states and the Secretariat agreed that voting should be avoided at all costs and used only as a last resort.

NGO Participation

14. (U) The main French grievance is the lack of transparency with regard to the participation of NGOs. The French proposed establishing formal observer status for UNCITRAL in two categories, for general and specific expertise. In their subsequent comments, however, France admitted that all they really wanted was the Secretariat to share information about which NGOs are invited to participate in UNCITRAL meetings. The Secretariat explained that it had assumed the role of pre-screening NGO applicants on behalf of member states, who had the right to reject an NGO application, although this has never happened. The vast majority of applications is non-controversial and routinely approved, according to the Secretariat, and any questionable or borderline cases are forwarded to member states for approval.

15. (U) When asked by the U.S. whether it wanted member states to assume the Secretariat's role of screening NGO participation, France replied no, it just wanted more transparency in the form of a list of NGO participants. The U.S. for example, along with any other states that indicate an interest such as France, are routinely appraised of applications for attendance. France accepted the

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Secretariat's rather flexible criteria for NGO participation (in A/CN.9/676, paragraph 26). The Republic of Korea noted that it would be impractical for member states to approve the participation of every NGO in advance, and suggested that they be approved at the beginning of each meeting. When pressed by the U.S. about whether they would have such decisions made only in June, the French again said no, the Secretariat could send out note verbales at any time to announce proposed NGO participants. The French bottom line appears to be that the Secretariat should keep member states informed about which NGOs have been invited to participate.

Role of NGOs During Meetings

16. (U) The French paper states (in para. 6.1) that NGOs are entitled to comment "on a specific point at an early stage, prior to the actual deliberations." The U.S. has expressed its opposition to that and concern that NGOs continue to be allowed to freely contribute during the course of deliberations, and its opposition to anything that would restrict their participation. The U.S. asked France to clarify whether this proposal would allow NGOs to speak only at the beginning of meetings and remain silent for the rest of the session. France agreed that NGOs should be able to contribute throughout the session, and clarified that their main point is that NGOs have no formal role in decision-making (a position with which the U.S. agrees).

Work of the Secretariat

17. (U) This segment of the meeting was primarily a dialogue between the French and the Secretariat. The main complaint of the French, again, was lack of transparency. France wants the Secretariat to publish the dates and participants of informal expert group meetings on the UNCITRAL website. The Secretariat responded that in the last several years, the only country that has asked for this information was France, and the information was provided as requested. The French balked, saying countries should not have to ask for

information; it should be provided to them. The Secretariat noted its reservations about publicly releasing information about specific participants and that in any case there were only a few such meetings each year. The crux of the issue apparently is different interpretations of the concept of transparency. The French say the Secretariat lacks transparency because states must ask for information. The Secretariat counters that it is transparent because it always provides information when asked. UNVIE's suggestion is to strike a middle ground between the "push" and "pull" interpretations of transparency, by proposing that the Secretariat list the dates and subjects of informal expert groups on its website, but provide potentially sensitive information on participants only upon request.

Language Parity

18. (U) The French again raised their long-standing concern about the drift toward use of only one language in working meetings and proposed that the future guidelines stress the importance of the principle of parity of the two working languages. France noted that in Vienna especially (compared to New York, Geneva, and Nairobi, for example), there was a strong tendency to use English as the only working language. The Swiss representative gave an impassioned speech on the merits of multilingualism, and lamented that many speakers of the five other official languages used English during meetings even when full interpretation was available. The Secretariat gave its usual reply that it does what it can subject to budgetary resources and provides language services on an "as available" basis.

Closing on a Conciliatory Note

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19. (U) COMMENT: France closed the meeting by reassuring states that it merely wanted to "improve UNCITRAL, nothing more" and that its only wants to "clarify, not change" the rules and working methods of UNCITRAL. These were welcome comments because they represent a substantial shift from December 2007 and they align France with the prevailing view of UNCITRAL member states, including the U.S., that no significant revisions to UNCITRAL's rules are needed.

110. (U) The Secretariat noted, both during the meeting and in private consultations the day before, its strong desire to put the working methods issue to bed this year. UNVIE fully concurs with this objective and is optimistic that a guidelines document can be developed by July that will clarify the Commission's rules without substantively altering them.

COMMENT: UNVIE'S SUGGESTIONS

111. (U) UNVIE's view is that draft guidelines for chairpersons on the application of consensus would help reduce ambiguity and ensure consistency across various UNCITRAL working groups. Such guidelines, however, must be informal, flexible, and not overly restrictive. UNVIE shares France's concerns about the transparency of the UNCITRAL Secretariat, because if there is an appearance that it withholds information, the Secretariat opens itself to suspicions that it is working behind the backs of some or all member states. UNVIE's suggestion is that the UNCITRAL Secretariat should distribute to member states a list of participating NGOs for each working group and plenary meeting. The list should be distributed well in advance of the meetings, to allow time for member states to review the list and raise any formal objections or propose additional NGOs who may be invited to participate. On the language parity issue, it is UNVIE's view this remains the lowest priority of France's four areas of reform. The U.S. should keep a low profile,

because regardless of how strongly the principle of parity is stressed, there will be little or no substantive changes to current language practice given the current budget constraints of UNOV conference services. End Comment.

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